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BEFORE THE

Federal Communications Commission

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WASHINGTON, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of

MM DOCKET NO. 93-42

MOONBEAM, INC.

File No. BPH-911115MG


GARY E. WILLSON

File No. BPH-911115MO

For a Construction Permit
New FM Station on Channel 265A
in Calistoga, CaliforniaTO: The Honorable Edward Luton
Administrative Law JudgeOPPOSITION TO WITNESS NOTIFICATION

Gary E. Willson (Willson) pursuant to the Order, FCC 93M-253 (released May 14, 1993) files this opposition to Moonbeam's letter notice of intent to call Gary E. Willson for cross examination at the scheduled hearing on July 21, 1993. Moonbeam has made absolutely no showing demonstrating a need to cross examine Mr. Willson and its request therefore should be denied.

Rule 1.248(d)(4) provides that in broadcast comparative cases cross examination will be permitted only where "material issues of decisional fact cannot be resolved without oral evidentiary hearing procedures or the public interest requires oral evidentiary proceedings." The Commission in adopting its Proposals to Reform the Comparative Hearing Process, 6 FCC Rcd. 157 (1990), recon denied, 6 FCC Rcd. 3403 (1991) implemented procedures to expedite the comparative hearing process. One of those procedures was to eliminate cross examination absent a specific showing of need. The Commission noted, "Witnesses should not be requested for cross examination unless there is a

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legitimate expectation that some part of the direct testimony, as reflected in exhibits, is subject to a question of substantial decisional significance." Id. at ¶36. No question has been raised concerning Willson's direct testimony.

Moonbeam has made no showing of need. It states merely that it "gives notice that it intends to call Gary E. Willson for cross examination...". See Exhibit 1. Mr. Willson has been thoroughly deposed in this proceeding by Moonbeam. He has explained in detail his integration proposal and testified concerning other aspects of his application. Moonbeam had the benefit of Willson's deposition testimony, but can demonstrate no need to cross examine Mr. Willson.¹ Its request should, therefore, be denied.

WHEREFORE, it is respectfully requested that Moonbeam's request to cross examine Mr. Willson be denied.

Respectfully submitted,

GARY E. WILLSON

By A. Wray Fitch III
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His Attorney

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July 14, 1993

[0068/C93awfOpWit]

¹ The Commission noted in Reform Proposals, supra, 6 FCC Rcd. 3404 at ¶14, "The discovery process provides ample opportunity to test an applicants bona fides, and in most cases, it will be material uncovered during discovery that raises legitimate expectations that some part of a witnesses' direct testimony, as reflected in exhibits is subject to a question of substantial significance."

CERTIFICATE OF SERVICE

I, George Culver, in the law offices of Gammon & Grange, hereby certify that I have sent, this 14th day of July 1993, by first-class, postage-prepaid, U.S. Mail, copies of the foregoing OPPOSITION TO WITNESS NOTIFICATION to the following:

* The Honorable Edward Luton
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